

SITE DEVELOPMENT PERMIT

FILE NO.	H17-008
LOCATION OF PROPERTY	5519 Snell Avenue (APN: 464-14-028)
ZONING DISTRICT	CP Commercial Pedestrian
GENERAL PLAN DESIGNATION	NCC (Neighborhood/Community Commercial)
PROPOSED USE	Site Development Permit to allow the remodel of an Arby's restaurant with an existing drive through use into a Dunkin' Donuts on a 0.86 gross acre site
ENVIRONMENTAL STATUS	Exempt per CEQA Guidelines Section 15302 Replacement or Reconstruction of Existing Structures and Facilities
APPLICANT / ADDRESS	Jeremy Layton 10 S. Grant Street Roseville, CA 95678
OWNER / ADDRESS	Jean Chao c/o Frank Chao 6029 Tillman Court Pleasanton, CA 94588

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as follows for this proposed project:

1. **Site Description and Surrounding Uses.** The subject site is located at 5519 Snell Avenue between Giuffrida Avenue and Blossom Hill Road. The site is currently developed with an existing office building that is approximately 4,100 square feet and an existing Arby's restaurant with drive through that is approximately 3,000 square feet. The project is located west of Snell Avenue and an existing commercial shopping center; west and north of two other commercial shopping centers, and south of Giuffrida Avenue and commercial shopping center.
2. **Project Description.** The proposed project is to allow for the remodel of an Arby's restaurant with an existing drive through use into a Dunkin' Donuts.
3. **General Plan Conformance.** The subject site has an Envision 2040 General Plan Land Use/Transportation designation of Neighborhood/Community Commercial. This designation supports a very broad range of commercial activity that typically has a strong connection to and provide services and amenities for the nearby community. New uses should be designed to promote that connection with an appropriate urban form that supports walking, transit use and public interaction. This land use designation discourages drive through uses. However, the current drive through is an existing drive through use that was permitted under Site Development Permit H77-05-116, approved on July 20, 1977. This existing entitlement established a legal non-conforming use for the drive through use, allowing the project to still be in conformance with the General Plan land

use designation. The use of the site for the new commercial tenant and the building remodel are consistent with the land use designation of Neighborhood/Community Commercial. The proposed project is also consistent with the following General Plan goals and policies:

- a. Vibrant Neighborhood Policy VN-1.15: Develop and implement policies, design guidelines and regulations to facilitate the development of compatible small scale neighborhood-serving retail in appropriate locations within or adjacent to existing neighborhoods
 - i. *Analysis: The proposed change in retailer from Arby's to Dunkin' Donuts retains the existing restaurant use for the neighborhood, but allows for an update of the existing project site and building. The applicant will be modifying and beautifying the existing landscaping, as well as modernizing the building exterior. This new tenant will be providing a different type of food option to the neighborhood, which will be an added convenience to the residential neighbors in the area.*
- b. Neighborhood Serving Commercial Goal LU-5: Locate viable neighborhood-serving commercial uses throughout the City in order to stimulate economic development, create complete neighborhoods, and minimize vehicle miles traveled.
 - i. *Analysis: The proposed retail tenant is an established restaurant chain that will provide a needed amenity (breakfast option) to the surrounding neighborhood. The location of this site is convenient for residents and will stimulate the viability of this shopping center.*
- c. Land Use Policy LU-5.2: To facilitate pedestrian access to a variety of commercial establishments and services that meet the daily needs of residents and employees, locate neighborhood-serving commercial uses throughout the city, including identified growth areas and areas where there is existing or future demand for such uses.
 - i. *Analysis: The proposed commercial use will provide a new public eating establishment for the surrounding residents and businesses in the area. The location of this use in the area will serve an existing void in services for residents and business patrons in the area.*
4. **Zoning.** The subject site is located in the CP Commercial Pedestrian Zoning District. The CP Commercial Pedestrian Zoning District allows for pedestrian-oriented retail activity at a scale compatible with surrounding residential neighborhoods. This district is also intended to support intensive pedestrian-oriented commercial activity and development. While the drive-through component of this use is not pedestrian-oriented, the overall use of the building is oriented to the street, and the site is being updated to create a more pedestrian-friendly atmosphere. There is also a large patio for outdoor dining which will activate the area of the shopping center that fronts Snell Avenue.
 - a. **Minimum Lot Size.** This parcel is greater than the minimum lot size of 6,000 feet in the CP Commercial Pedestrian Zoning District.
 - b. **Setbacks and Height.** The proposed building is consistent with the height and setback requirements of the CP Commercial Pedestrian Zoning District.
 - c. **Parking.** Per section 20.90.220, public eating establishments require one parking space per 2.5 seats. The proposed restaurant will have 29 seats, requiring 12 parking spaces. The site has 21 spaces which is sufficient parking for the proposed used.
 - d. **Drive-Through Use.** Site Development Permit, H77-05-116 was issued on July 20, 1977 for a "drive up restaurant" with a drive-through window. The building has functioned as a drive-through since this approval. The current CP Commercial Pedestrian Zoning District does not permit drive-through use. This 1977 entitlement allows the site to function with a drive-through use as a legal non-conforming use. Per section 20.150.020, a legal nonconforming use may be

continued indefinitely as long as the use is not discontinued or abandoned for a period of six months or more. A legal non-conforming use would be considered abandoned if the structure containing the use is demolished. Per Section 20.80.420 of the Zoning Ordinance, demolition is defined as the removal of more than fifty percent of the exterior walls of a building. For the purposes of calculating the amount of exterior walls removed, the remaining exterior walls must be contiguous. This remodel and tenant improvement does not involve the demolition of the existing building based on the City's definition of demolition. Therefore, the drive-through use may remain and be considered a legal non-conforming use in the CP Commercial Pedestrian Zoning District.

5. **Site Development Permit Findings.** Section 20.100.630 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit.

- a. The Site Development permit, as approved, is consistent with and will further the policies of the General Plan and applicable specific plans and area development policies.
 - i. *Analysis: As noted above, the proposed public eating establishment use is consistent with the Neighborhood/Community Commercial land use designation and other General Plan policies. However, the drive through use is not supported by this land use designation. Nevertheless, the drive through use is a legal non-conforming use as established by the section 20.150.020 of the Zoning Ordinance and is permitted to exist in conjunction with the proposed remodeled public eating establishment use.*
- b. The Site Development permit, as approved, conforms with the Zoning Code and all other provisions of the San Jose Municipal Code applicable to the project.
 - i. *Analysis: As noted above, the proposed public eating establishment is a permitted use in the CP Commercial Pedestrian Zoning District. However, the drive through use is not a permitted use in this Zoning Districting. Nevertheless, the drive through use is a legal non-conforming use as established by the section 20.150.020 of the Zoning Ordinance and is permitted to exist in conjunction with the proposed remodeled public eating establishment use.*
- c. The site development permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency.
 - i. *Analysis: Council Policy 6-10: Drive Through Uses was established March 23, 1979, approximately 18 months after the approval of the existing drive through restaurant. The proposed project does not modify the approved drive through use. As such, this drive through is not subject to this policy.*
- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
 - i. *Analysis: The existing building is adjacent to an existing office building on site. Both buildings are oriented toward Snell Avenue. The office building is an older building, whose architectural style is outdated and in need of remodeling. The proposed remodel, while not of a similar architectural style, as elements will be using similar colors and materials as the existing office building. The remodeled store will remove an unattractive arch between the two buildings, restoring the separation between the two structures as originally intended.*
- e. The orientation, location, and elevation of the proposed buildings and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

- i. *Analysis: The proposed remodeled public eating establishment will be in the same location as the existing public eating establishment. The updated facades are compatible with the other commercial uses in the area. The updated exteriors incorporate similar materials as the surrounding commercial uses, but the remodeled look provides a more modern take on the existing commercial architecture in the area.*
- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.
 - i. *Analysis: The proposed project is exempt from environmental review under Section 15302 Replacement of Reconstruction the California Environmental Quality Act (CEQA), in that this project will involve the remodeling an existing public eating establishment and the structure will stay the same size, will provide the same purpose, and house approximately the same amount of seats as the previous public eating establishment.*
- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
 - i. *Analysis: The proposed project will be upgrading the existing landscaping to remove any dead and overgrown landscaping. The site has no outdoor activity that needs to be concealed, and the trash enclosure is properly shielded from view.*
- h. Traffic access, pedestrian access and parking are adequate.
 - i. *Analysis: The proposed project conforms to the parking requirements set forth in the Zoning Ordinance for a public eating establishment. This site is easily accessible from both Snell and Giuffrida Avenue. Pedestrians can enter the site from either street, with the most direct access from a pathway leading to the building from Snell Avenue.*

In accordance with the findings set forth above, a Site Development Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two (2) years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of

Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.

3. **Building Permit.** Obtainment of a Building Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions.
4. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
5. **Conformance to Plans.** The development of the site shall conform to the approved Site Development Permit plans entitled, "Dunkin' Brands Tenant Improvement 5519 Snell Avenue" dated May 18, 2017 on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
6. **Legal Non-Conforming Drive Through.** The existing drive through was permitted by File No. H77-05-116, issued on July 20, 1977. As such this drive through has a legal entitlement. Given the zoning district of this site (CP Commercial Pedestrian) does not allow drive through uses, this existing drive through use is considered a legal non-conforming use. As long as the use is not discontinued per Chapter 20.150 of the Zoning Ordinance, this drive through will continue to be a legal non-conforming use.
7. **Demolition.** This permit does not allow the demolition of the existing public eating establishment as defined by Zoning Code Section 20.80.420. Any demolition of the structure as defined by this code section will revoke the legal non-conforming status of the existing drive through and the drive through will no longer be a permitted use.
8. **Compliance with Laws.** The subject use shall be conducted in full compliance with all local, state and federal laws and regulations. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code or any other law.
9. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San José Municipal Code.
10. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
11. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
12. **Outdoor Storage.** No outdoor storage is allowed or permitted unless designated on the approved plan set.

13. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
14. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
15. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include, but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.
16. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
17. **Permit Adjustment Required.** Prior to the issuance of a Building Permit, any changes to the proposed exteriors and or landscape plan will require a Permit Adjustment and must be approved at the satisfaction of the Director of Planning, Building, and Code Enforcement.
18. **Lighting.** All new on-site, exterior, unroofed lighting shall conform to the City's Outdoor Lighting Policy and shall use fully cut-off and fully shielded, low-pressure sodium fixtures unless otherwise approved with this project. Lighting shall be designed, controlled and maintained so that no light source is visible from outside of the property. Any approval of an exception to the requirement for Low Pressure Sodium Lighting shall be in accordance with the City of San Jose Interim Lighting Policy Broad Spectrum Lighting for Private Development.
19. **Generators.** This permit does not include the approval of any stand-by/backup electrical power generation facility. Any future stand-by/backup generators shall secure appropriate permits and shall conform to the regulations of Title 20 of the Municipal Code.
20. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 3 of Chapter 15.11 of Title 15 of the San José Municipal Code, Water Efficient landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines. The wall at the rear of the property must be covered with climbing vines.
21. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
22. **Recycling.** Scrap construction and demolition material shall be recycled. Integrated Waste Management staff at (408) 535-8550 can provide assistance on how to recycle construction and demolition debris from the Project, including information on available haulers and processors.
23. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This permit file number, H17-008 shall be printed on all construction plans submitted to the Building Division.
 - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - c. *Emergency Address Card.* The Project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.

- d. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
24. **Construction Hours.** Construction and grading activities shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday. This includes the staging of equipment and construction personnel. The construction hours shall be printed on all plans for the project used to construct the project. Interior construction activities that do not generate any audible noise impacts at residential properties are allowed on Saturdays between 9:00 a.m. and 5:00 p.m.
25. **Enforcement.** The Director of Planning, Building and Code Enforcement may order an immediate halt to construction activities on the project site any time that the Director determines that the project is not in substantial conformance with the requirements of this Permit. Within seven days of ordering such a halt to construction, the Director of Planning, Building and Code Enforcement shall issue a Notice of Noncompliance in conformance with Section 20.100.320 of Title 20 of the San José Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the development permit shall not be revoked, suspended, or modified if the noncompliance is not corrected.
26. **Construction Deliveries.** Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
27. **Fencing.** The site shall be wholly enclosed by security fencing where the site is accessible by vehicles. The gates to the project site shall remain locked during all other times, except for a 30-minute period immediately preceding and following the above hours of construction.
28. **Assembly Area.** Workers shall not arrive to the site until the opening of the project gates. The applicant shall designate a location without adjacent residential units for workers to wait prior to the opening of the project gates.
29. **Disturbance Coordinator.** A Construction/Disturbance Coordinator shall be identified by the developer for this project. The Construction/Disturbance Coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance compliance conditions in this permit. The coordinator shall also compile information regarding construction phasing/operations and keep the neighborhood informed of the stages of development. The coordinator shall also listen and respond to neighborhood concerns regarding construction, determine the cause of the concern (e.g., starting too early, bad muffler, etc.) and institute reasonable measures warranted to correct the problem in a timely manner. The coordinator shall maintain a log of calls and shall make that log available to the City of San José upon request.
30. **Posting of Telephone Number.** The name and phone number of the Construction/Disturbance coordinator, the hours of construction limitations, City File Number H16-020, shall be displayed on a weatherproof sign posted at each entrance to the project site. A local phone number with answering service shall be maintained during the duration of project construction.
31. **Street Cleaning and Dust Control.** During construction, the developer shall damp-sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.

32. **Construction Watering.** The proposed project shall use recycled water for all grading, dust control, and other non-potable approved uses during construction to the satisfaction of the Director of Public Works.
33. **Public Works Clearance for Building Permit(s):** Prior to the approval of the Tract or Parcel Map (if applicable) by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- a. **Transportation:** The projected traffic for this project was reviewed and found to be minimal (22 AM peak hour trips), therefore no further traffic analysis is required.
 - b. **Urban Village Plan:** This project is located in a designated Urban Village per the Envision San Jose 2040 General Plan. Urban Villages are designed to provide a vibrant and inviting mixed-use setting to attract pedestrians, bicyclists, and transit users of all ages and to promote job growth.
 - c. **Grading/Geology:**
 - i. A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
 - d. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source control measures to minimize stormwater pollutant discharges.
 - e. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - f. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - g. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - h. **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project

34. **Revocation, Suspension, Modification.** This Site Development Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:

- a. A violation of any conditions of the Planned Development Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **21st day of June 2017.**

Rosalynn Hughey, Interim Director
Planning, Building, and Code Enforcement

Deputy